

106TH CONGRESS  
1ST SESSION

# H. R. 2614

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## AN ACT

To amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes.

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To amend the Small Business Investment Act to make improvements to the certified development company program, and for other purposes.

1       *Be it enacted by the Senate and House of Representa-*  
2       *tives of the United States of America in Congress assembled,*

1 **SECTION 1. SHORT TITLE.**

2 This Act may be cited as the “Certified Development  
3 Company Program Improvements Act of 1999”.

4 **SEC. 2. WOMEN-OWNED BUSINESSES.**

5 Section 501(d)(3)(C) of the Small Business Invest-  
6 ment Act (15 U.S.C. 695(d)(3)(C)) is amended by insert-  
7 ing before the comma “or women-owned business develop-  
8 ment”.

9 **SEC. 3. MAXIMUM DEBENTURE SIZE.**

10 Section 502(2) of the Small Business Investment Act  
11 of 1958 (15 U.S.C. 696(2)) is amended to read as follows:

12 “(2) Loans made by the Administration under  
13 this section shall be limited to \$1,000,000 for each  
14 such identifiable small business concern, except  
15 loans meeting the criteria specified in section  
16 501(d)(3), which shall be limited to \$1,300,000 for  
17 each such identifiable small business concern.”.

18 **SEC. 4. FEES.**

19 Section 503(f) of the Small Business Investment Act  
20 of 1958 (15 U.S.C. 697(f)) is amended to read as follows:

21 “(f) EFFECTIVE DATE.—The fees authorized by sub-  
22 sections (b) and (d) shall apply to financings approved by  
23 the Administration on or after October 1, 1996, but shall  
24 not apply to financings approved by the Administration  
25 on or after October 1, 2003.”.

1 **SEC. 5. PREMIER CERTIFIED LENDERS PROGRAM.**

2 Section 217(b) of the Small Business Reauthoriza-  
3 tion and Amendments Act of 1994 (relating to section 508  
4 of the Small Business Investment Act) is repealed.

5 **SEC. 6. SALE OF CERTAIN DEFAULTED LOANS.**

6 Section 508 of the Small Business Investment Act  
7 of 1958 (15 U.S.C. 697e) is amended—

8 (1) in subsection (a), by striking “On a pilot  
9 program basis, the” and inserting “The”;

10 (2) by redesignating subsections (d) through (i)  
11 as subsections (e) through (j), respectively;

12 (3) in subsection (f) (as redesignated by para-  
13 graph (2)), by striking “subsection (f)” and insert-  
14 ing “subsection (g)”;

15 (4) in subsection (h) (as redesignated by para-  
16 graph (2)), by striking “subsection (f)” and insert-  
17 ing “subsection (g)”;

18 (5) by inserting after subsection (c) the fol-  
19 lowing:

20 “(d) SALE OF CERTAIN DEFAULTED LOANS.—

21 “(1) NOTICE.—If, upon default in repayment,  
22 the Administration acquires a loan guaranteed under  
23 this section and identifies such loan for inclusion in  
24 a bulk asset sale of defaulted or repurchased loans  
25 or other financings, it shall give prior notice thereof  
26 to any certified development company which has a

1       contingent liability under this section. The notice  
 2       shall be given to the company as soon as possible  
 3       after the financing is identified, but not less than 90  
 4       days before the date the Administration first makes  
 5       any records on such financing available for examina-  
 6       tion by prospective purchasers prior to its offering in  
 7       a package of loans for bulk sale.

8               “(2) LIMITATIONS.—The Administration shall  
 9       not offer any loan described in paragraph (1) as  
 10      part of a bulk sale unless it—

11               “(A) provides prospective purchasers with  
 12              the opportunity to examine the Administration’s  
 13              records with respect to such loan; and

14               “(B) provides the notice required by para-  
 15              graph (1).”.

16 **SEC. 7. LOAN LIQUIDATION.**

17       (a) LIQUIDATION AND FORECLOSURE.—Title V of  
 18      the Small Business Investment Act of 1958 (15 U.S.C.  
 19      695 et seq.) is amended by adding at the end the fol-  
 20      lowing:

21 **“SEC. 510. FORECLOSURE AND LIQUIDATION OF LOANS.**

22       “(a) DELEGATION OF AUTHORITY.—In accordance  
 23      with this section, the Administration shall delegate to any  
 24      qualified State or local development company (as defined  
 25      in section 503(e)) that meets the eligibility requirements

1 of subsection (b)(1) the authority to foreclose and liq-  
2 uidate, or to otherwise treat in accordance with this sec-  
3 tion, defaulted loans in its portfolio that are funded with  
4 the proceeds of debentures guaranteed by the Administra-  
5 tion under section 503.

6 “(b) ELIGIBILITY FOR DELEGATION.—

7 “(1) REQUIREMENTS.—A qualified State or  
8 local development company shall be eligible for a del-  
9 egation of authority under subsection (a) if—

10 “(A) the company—

11 “(i) has participated in the loan liq-  
12 uidation pilot program established by the  
13 Small Business Programs Improvement  
14 Act of 1996 (15 U.S.C. 695 note), as in  
15 effect on the day before promulgation of  
16 final regulations by the Administration im-  
17 plementing this section;

18 “(ii) is participating in the Premier  
19 Certified Lenders Program under section  
20 508; or

21 “(iii) during the 3 fiscal years imme-  
22 diately prior to seeking such a delegation,  
23 has made an average of not less than 10  
24 loans per year that are funded with the

proceeds of debentures guaranteed under  
section 503; and

“(B) the company—

“(i) has one or more employees—

“(I) with not less than 2 years of  
substantive, decision-making experi-  
ence in administering the liquidation  
and workout of problem loans secured  
in a manner substantially similar to  
loans funded with the proceeds of de-  
bentures guaranteed under section  
503; and

“(II) who have completed a train-  
ing program on loan liquidation devel-  
oped by the Administration in con-  
junction with qualified State and local  
development companies that meet the  
requirements of this paragraph; or

“(ii) submits to the Administration  
documentation demonstrating that the  
company has contracted with a qualified  
third-party to perform any liquidation ac-  
tivities and secures the approval of the  
contract by the Administration with re-  
spect to the qualifications of the contractor

1                   and the terms and conditions of liquidation  
2                   activities.

3                   “(2) CONFIRMATION.—On request the Adminis-  
4                   tration shall examine the qualifications of any com-  
5                   pany described in subsection (a) to determine if such  
6                   company is eligible for the delegation of authority  
7                   under this section. If the Administration determines  
8                   that a company is not eligible, the Administration  
9                   shall provide the company with the reasons for such  
10                  ineligibility.

11                  “(c) SCOPE OF DELEGATED AUTHORITY.—

12                  “(1) IN GENERAL.—Each qualified State or  
13                  local development company to which the Administra-  
14                  tion delegates authority under section (a) may with  
15                  respect to any loan described in subsection (a)—

16                         “(A) perform all liquidation and fore-  
17                         closure functions, including the purchase in ac-  
18                         cordance with this subsection of any other in-  
19                         debtedness secured by the property securing the  
20                         loan, in a reasonable and sound manner accord-  
21                         ing to commercially accepted practices, pursu-  
22                         ant to a liquidation plan approved in advance  
23                         by the Administration under paragraph (2)(A);

24                         “(B) litigate any matter relating to the  
25                         performance of the functions described in sub-



paragraph (A), except that the Administration may—

“(i) defend or bring any claim if—

“(I) the outcome of the litigation may adversely affect the Administration’s management of the loan program established under section 502; or

“(II) the Administration is entitled to legal remedies not available to a qualified State or local development company and such remedies will benefit either the Administration or the qualified State or local development company; or

“(ii) oversee the conduct of any such litigation; and

“(C) take other appropriate actions to mitigate loan losses in lieu of total liquidation or foreclosures, including the restructuring of a loan in accordance with prudent loan servicing practices and pursuant to a workout plan approved in advance by the Administration under paragraph (2)(C).

“(2) ADMINISTRATION APPROVAL.—

1 “(A) LIQUIDATION PLAN.—

2 “(i) IN GENERAL.—Before carrying  
3 out functions described in paragraph  
4 (1)(A), a qualified State or local develop-  
5 ment company shall submit to the Admin-  
6 istration a proposed liquidation plan.

7 “(ii) ADMINISTRATION ACTION ON  
8 PLAN.—

9 “(I) TIMING.—Not later than 15  
10 business days after a liquidation plan  
11 is received by the Administration  
12 under clause (i), the Administration  
13 shall approve or reject the plan.

14 “(II) NOTICE OF NO DECISION.—  
15 With respect to any plan that cannot  
16 be approved or denied within the 15-  
17 day period required by subclause (I),  
18 the Administration shall within such  
19 period provide in accordance with sub-  
20 paragraph (E) notice to the company  
21 that submitted the plan.

22 “(iii) ROUTINE ACTIONS.—In carrying  
23 out functions described in paragraph  
24 (1)(A), a qualified State or local develop-  
25 ment company may undertake routine ac-

1           tions not addressed in a liquidation plan  
2           without obtaining additional approval from  
3           the Administration.

4           “(B) PURCHASE OF INDEBTEDNESS.—

5                 “(i) IN GENERAL.—In carrying out  
6           functions described in paragraph (1)(A), a  
7           qualified State or local development com-  
8           pany shall submit to the Administration a  
9           request for written approval before com-  
10          mitting the Administration to the purchase  
11          of any other indebtedness secured by the  
12          property securing a defaulted loan.

13                 “(ii) ADMINISTRATION ACTION ON RE-  
14          QUEST.—

15                 “(I) TIMING.—Not later than 15  
16          business days after receiving a request  
17          under clause (i), the Administration  
18          shall approve or deny the request.

19                 “(II) NOTICE OF NO DECISION.—

20          With respect to any request that can-  
21          not be approved or denied within the  
22          15-day period required by subclause  
23          (I), the Administration shall within  
24          such period provide in accordance

1 with subparagraph (E) notice to the  
2 company that submitted the request.

3 “(C) WORKOUT PLAN.—

4 “(i) IN GENERAL.—In carrying out  
5 functions described in paragraph (1)(C), a  
6 qualified State or local development com-  
7 pany shall submit to the Administration a  
8 proposed workout plan.

9 “(ii) ADMINISTRATION ACTION ON  
10 PLAN.—

11 “(I) TIMING.—Not later than 15  
12 business days after a workout plan is  
13 received by the Administration under  
14 clause (i), the Administration shall  
15 approve or reject the plan.

16 “(II) NOTICE OF NO DECISION.—  
17 With respect to any workout plan that  
18 cannot be approved or denied within  
19 the 15-day period required by sub-  
20 clause (I), the Administration shall  
21 within such period provide in accord-  
22 ance with subparagraph (E) notice to  
23 the company that submitted the plan.

24 “(D) COMPROMISE OF INDEBTEDNESS.—

25 In carrying out functions described in para-

graph (1)(A), a qualified State or local development company may—

“(i) consider an offer made by an obligor to compromise the debt for less than the full amount owing; and

“(ii) pursuant to such an offer, release any obligor or other party contingently liable, if the company secures the written approval of the Administration.

“(E) CONTENTS OF NOTICE OF NO DECISION.—Any notice provided by the Administration under subparagraphs (A)(ii)(II), (B)(ii)(II), or (C)(ii)(II)—

“(i) shall be in writing;

“(ii) shall state the specific reason for the Administration’s inability to act on a plan or request;

“(iii) shall include an estimate of the additional time required by the Administration to act on the plan or request; and

“(iv) if the Administration cannot act because insufficient information or documentation was provided by the company submitting the plan or request, shall speci-

1           fy the nature of such additional informa-  
2           tion or documentation.

3           “(3) CONFLICT OF INTEREST.—In carrying out  
4           functions described in paragraph (1), a qualified  
5           State or local development company shall take no ac-  
6           tion that would result in an actual or apparent con-  
7           flict of interest between the company (or any em-  
8           ployee of the company) and any third party lender,  
9           associate of a third party lender, or any other person  
10          participating in a liquidation, foreclosure, or loss  
11          mitigation action.

12          “(d) SUSPENSION OR REVOCATION OF AUTHOR-  
13       ITY.—The Administration may revoke or suspend a dele-  
14       gation of authority under this section to any qualified  
15       State or local development company, if the Administration  
16       determines that the company—

17               “(1) does not meet the requirements of sub-  
18               section (b)(1);

19               “(2) has violated any applicable rule or regula-  
20               tion of the Administration or any other applicable  
21               law; or

22               “(3) fails to comply with any reporting require-  
23               ment that may be established by the Administration  
24               relating to carrying out of functions described in  
25               paragraph (1).

1 “(e) REPORT.—

2 “(1) IN GENERAL.—Based on information pro-  
3 vided by qualified State and local development com-  
4 panies and the Administration, the Administration  
5 shall annually submit to the Committees on Small  
6 Business of the House of Representatives and of the  
7 Senate a report on the results of delegation of au-  
8 thority under this section.

9 “(2) CONTENTS.—Each report submitted under  
10 paragraph (1) shall include the following informa-  
11 tion:

12 “(A) With respect to each loan foreclosed  
13 or liquidated by a qualified State or local devel-  
14 opment company under this section, or for  
15 which losses were otherwise mitigated by the  
16 company pursuant to a workout plan under this  
17 section—

18 “(i) the total cost of the project fi-  
19 nanced with the loan;

20 “(ii) the total original dollar amount  
21 guaranteed by the Administration;

22 “(iii) the total dollar amount of the  
23 loan at the time of liquidation, foreclosure,  
24 or mitigation of loss;

1 “(iv) the total dollar losses resulting  
2 from the liquidation, foreclosure, or mitiga-  
3 tion of loss; and

4 “(v) the total recoveries resulting  
5 from the liquidation, foreclosure, or mitiga-  
6 tion of loss, both as a percentage of the  
7 amount guaranteed and the total cost of  
8 the project financed.

9 “(B) With respect to each qualified State  
10 or local development company to which author-  
11 ity is delegated under this section, the totals of  
12 each of the amounts described in clauses (i)  
13 through (v) of subparagraph (A).

14 “(C) With respect to all loans subject to  
15 foreclosure, liquidation, or mitigation under this  
16 section, the totals of each of the amounts de-  
17 scribed in clauses (i) through (v) of subpara-  
18 graph (A).

19 “(D) A comparison between—

20 “(i) the information provided under  
21 subparagraph (C) with respect to the 12-  
22 month period preceding the date on which  
23 the report is submitted; and

24 “(ii) the same information with re-  
25 spect to loans foreclosed and liquidated, or



1 otherwise treated, by the Administration  
2 during the same period.

3 “(E) The number of times that the Admin-  
4 istration has failed to approve or reject a liq-  
5 uidation plan in accordance with subparagraph  
6 (A)(i), a workout plan in accordance with sub-  
7 paragraph (C)(i), or to approve or deny a re-  
8 quest for purchase of indebtedness under sub-  
9 paragraph (B)(i), including specific information  
10 regarding the reasons for the Administration’s  
11 failure and any delays that resulted.”.

12 (b) REGULATIONS.—

13 (1) IN GENERAL.—Not later than 150 days  
14 after the date of enactment of this Act, the Adminis-  
15 trator shall issue such regulations as may be nec-  
16 essary to carry out section 510 of the Small Busi-  
17 ness Investment Act of 1958, as added by subsection  
18 (a) of this section.

19 (2) TERMINATION OF PILOT PROGRAM.—Begin-  
20 ning on the date which the final regulations are  
21 issued under paragraph (1), section 204 of the

- 1 Small Business Programs Improvement Act of 1996
- 2 (15 U.S.C. 695 note) shall cease to have effect.

Passed the House of Representatives August 2,  
1999.

Attest:

*Clerk.*